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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,314      06/13/2005      Loren Lantz      M-1103      4108

54964      7590      02/07/2007  
TYCO HEALTHCARE - EDWARD S. JARMOLOWICZ  
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MANSFIELD, MA 02048

EXAMINER
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VERBITSKY, GAIL KAPLAN

ART UNIT	PAPER NUMBER
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2859

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS      02/07/2007      PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/538,314	LANTZ ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gail Verbitsky	2859	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2,4-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4-6, 14, 17-18 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over O'Hara et al. (U.S. 4662360) [hereinafter O'Hara] in view of Fraden et al. (U.S. 57950670 [hereinafter Fraden]).

O'Hara discloses in Figs. 1-3 a device in the field of applicant's endeavor comprising a plurality of circumferentially positioned ears/ ribs 18 on an internal surface of a tubular body of a probe/ thermometer, the ribs 18 to be engaged with dents on an external surface of the probe. It is inherent, that the ribs would hold the probe cover in a fixed position on the thermometer and thus, a transverse film would be kept in some relationship with the distal end of the probe.

For claim 2: as shown in Fig. 2 an outer circumference of the distal end of the tubular body is substantially arcuated.

For claims 4-6: as shown in Fig. 6a, the rib 18 has a longitudinal portion and a transverse portion.

For claim 14: the tubular body defines a plurality of protuberances 16, as shown in Fig. 5, projecting from outer surface, they are relatively proximally spaced from the distal end of the tubular body. The protuberances are configured to facilitate nesting of the tubular body of the probe on the thermometer.

For claim 18: both, longitudinal and transverse portions of the ribs are adapted to receivably engage the thermometer.

O'Hara does not explicitly teach that the ribs would keep the probe cover film in spaced relationship with the distal end of the thermometer.

Fraden discloses in Figs. 3-5 a device in the field of applicant's endeavor wherein the device comprising a tubular body having an internal fold (circumferential rib) 6 at its distal end about inner circumference (circumferential edge). The fold 16 abuts against (engage with) a rim of the probe such that there is an air gap between the film/ window 10 and the distal end of the probe. Thus, the distal end of the probe is spaced from the window 10.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to use the ribs in the device of O'Hara, so as to keep the cover spaced from the distal end of the probe/ thermometer, as taught by Fraden, in order to ensure that the cover is not damaged by the edges of the probe at the moment when the cover is inserted in the patient's ear canal, therefore, protecting the probe from contamination.

3. Claims 7-13, 15-16 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over O'Hara and Fraden, as applied to claims 1-2, 4-6, 14, 17-18 above, and further in view of Wu (U.S. 6238088).

O'Hara and Fraden disclose the device as stated above.

They do not explicitly teach the limitations of claims 7-16. They do not explicitly teach at least one longitudinal rib projecting from an inner surface and inner and outer protuberances, as stated in claims 7-13, 15-16.

Wu discloses in Figs. 3-4 a device/ first probe cover having a tubular body of tapered configuration from a proximal end to a distal end, the distal end defines an opening to receipt a probe of a tympanic thermometer. The device also includes a body portion having a plurality of protuberances/ plurality of longitudinal ribs 15 being proximally spaced from the distal end and disposed circumferentially about a wall of said body portion. The protuberances are disposed on the outside surface and configured to nest a second probe cover on top of the first probe cover, the protuberances disposed on the inside surface are configured to nest the third probe cover when it inserted inside of the first probe cover, as shown in Fig. 4.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device, disclosed by O'Hara and Fraden, so as to have more longitudinal ribs/ protuberances on inner and outer surface of the probe body, as taught by Wu, so as to provide nesting for other probes, in order to provide a compact and safe storage the cover probes when they are not placed on the probe.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-2, 4-18 have been considered but are moot in view of the new ground(s) of rejection necessitated by the present amendment.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2859

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

Gail Verbitsky

Primary Patent Examiner, TC 2800



January 29, 2007